(3)

No. 09-18

Supreme Court, U.S.
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In The

Supreme Court of the United States

GANG B. SONG,

Petitioner,

v.

PAMELA TURNER, CHARLOTTE BUSH
and CITY OF DETROIT,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

REPLY BRIEF

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The attorney for the respondents, Mr. Andrew Jarvis, listed four reasons for denying the petition in his Brief in Opposition. The petitioner's reply to each of the reasons is given below.

REPLY TO THE RESPONDENTS' REASON I FOR DENYING THE PETITION

The misstatement in the racial claim caused the District Court and the Appeals Court to look for a similarly situated person outside the protected class who was not adversely affected specifically by the execution of the reduction in force. The two courts dismissed the petitioner's racial claim when the two courts could not find such persons. If the misstatement is removed, the two courts will not look for such persons specifically with respect to the execution of the reduction in force.

The discriminatory actions taken against the petitioner before the execution of the reduction in force are already listed in the Form Complaint (pages 5, 6, 7, 9, 10) submitted to the District Court and they are described again in the Appellant Brief (pages 14, 15) submitted to the Appeals Court.

The petitioner was an excellent employee as evidenced by the evaluations he received (See Exhibit 2a and Exhibit 2b of Petition for Rehearing submitted to the Court of Appeals on December 15, 2008) from his two previous supervisors, Mr. Augusto Belen and Ms. Judith Huddleston, who preceded Ms. Pamela

Turner, the petitioner's supervisor who demoted the petitioner.

The petitioner and Ms. Pamela Turner had never had disputes regarding the work done by the petitioner.

Without the racially discriminatory actions taken by the respondents, this lawsuit would never have happened.

The major evidence that the demotion was the result of anything but the reduction in force is that Rule 10 was blatantly and overwhelmingly violated. Because of the misunderstanding of Rule 10 by the District Court and the Appeals Court, the two courts could not see the major evidence.

The hearing officer could not understand Rule 10 correctly. As shown in the Writ of Certiorari (pages 11, 12, 13), the hearing officer's report is the evidence that he could not even know which section of Rule 10 was relevant to look. The respondents know this but they still did not restore the petitioner's class and this seems that the respondents are still retaliating.

Numerous other evidences supporting that the demotion was for retaliation are already listed in the Form Complaint submitted to the District Court and in the Appellant Brief and Petition for Rehearing submitted to the Appeals Court.

Three of them are listed again briefly below.

Why none of the non-union engineers except the petitioner were demoted or laid off? How was it that the petitioner was the only non-union engineer who had to be demoted?

The respondents posted a vacancy announcement for a Water & Wastewater Systems Maintenance Engineer, the same title that the petitioner held before his demotion. They cancelled the posting just before they demoted the petitioner. After they demoted the petitioner, they posted the vacancy again. This means that there was no lack of fund or no lack of work for a Water & Wastewater Systems Maintenance Engineer in the Department. This means that there was no genuine reason for demotion of the petitioner for reduction in force.

After Ms. Pamela Turner demoted and sent the petitioner away, she hired a consulting company, TYJT, to continue to do the work that the petitioner had been doing before his demotion.

REPLY TO THE RESPONDENTS' REASON II FOR DENYING THE PETITION

The petitioner stated in his Writ of Certiorari (pages 17, 18, 19) that the respondents violated Section 1(a), Section 2, Section 2(b)2(b), Section 4(a) and the spirit of Section 9 of Rule 10.

Mr. Jarvis, attorney for the respondents, denies only one of the violations: violation of Section 2(b)2(b). This denial of his will be proven senseless, contradicting and to have no credibility, as will be described below.

Mr. Jarvis says (9th line from the top of page 5, Brief in Opposition), " . . . , Petitioner misreads Rule 10." This is an outright false statement.

Mr. Jarvis makes a statement in his Brief in Opposition (7th line from the bottom – 2nd line from the bottom, page 5) by replacing a word in the original text of Section 2(b)2(b) with his own words and inserting his own words into the original text of Section 2(b)2(b). This amounts to adulteration and it altered the meaning of the original Section 2(b)2(b). He adulterated the original Section 2(b)2(b) but the petitioner follows the original Section 2(b)2(b) and therefore the petitioner seems to misread Section 2(b)2(b) from Mr. Jarvis' point of view. This will be further discussed later.

Mr. Jarvis says (from the 9th line from the bottom of page 5), "Section 2(b)2(b) applies when an employee previously held permanent status in another class not in series at the same or lower level." This statement of his proves that Section 2(b)2(b) does not apply to the petitioner because the petitioner previously held permanent status in the class of Senior Associate Civil Engineer-Design which is "in the Design series" as opposed to "not in series." In other words, Mr. Jarvis proved by his own statement

that the application of Section 2(b)2(b) to demote the petitioner was a violation of Section 2(b)2(b).

In order to show Mr. Jarvis' argument more transparently, the petitioner first explains briefly below how demotions and layoffs should be done in accordance with the original Section 2(b)2(a) and Section 2(b)2(b).

First of all, an employee cannot be laid off, according to Section 2(b)2 of Rule 10, without first giving the employee an opportunity to be demoted by replacing or "bumping" another employee in the way stipulated by Section 2(b)2(a) or Section 2(b)2(b). An employee who is demoted must bump another employee and take the class of the employee who is bumped. An employee cannot be demoted without bumping another employee because otherwise it is not reduction in force.

Section 2(b)2(a) says, "If the employee is in a class *in an occupational series*, ..."

Section 2(b)2(b) says, "If the employee has previously held permanent status in another class *not in series*. . . ."

Since an employee's current (prior to the reduction in force) class either belongs or does not belong to any series group and the employee's formerly-held class (the class prior to the current class) either belonged or did not belong to any series group, there are only four types of possible combinations.

Type 1: Say, Employee A's current class belongs to a series group and A's formerly-held class also belonged to a series group (Let us call this series "former series" for short). Then A is subjected to Section 2(b)2(a) only. Subjecting A to Section 2(b)2(a) only makes sense. If A is subjected to Section 2(b)2(a) for his current series and A is also subjected to Section 2(b)2(b) for his former series, then there will be a conflict.

Type 2: Say, Employee A's current class does not belong to any series group and A's formerly-held class did not belong to any series group either. Then A is subjected to Section 2(b)2(b) only. If Employee X is currently in the class which Employee A was in previously, this means that X's class does not belong to any series group either. Since both A and X do not belong to any series group, A can bump X without any conflict. An employee who belongs to a series group should not be bumped by another employee who is outside of the series group.

Type 3: Say, Employee A's current class belongs to a series group but A's formerly-held class did not belong to any series group. For this type of case, Section 2(b)2(b) says that A can be subjected to either of Section 2(b)2(a) and Section 2(b)2(b). Section 2(b)2(b) also says that A can freely choose either Section 2(b)2(a) or Section 2(b)2(b) for his demotion. Subjecting A to either of Section 2(b)2(a) and Section 2(b)2(b) makes sense. Since A has only one series, the current series, there is no possibility of a conflict that

another series may cause even if he is subjected to either of Section 2(b)2(a) and Section 2(b)2(b).

Type 4: Say, Employee A's current class does not belong to a series group but A's formerly-held class belonged to a series group. This happens when a unionized engineer, who has a series, is promoted to a non-union engineer and loses the series. A cannot be subjected to Section 2(b)2(a) simply because A does not have a current series to use and A cannot be subjected to Section 2(b)2(b) because A has a former series.

Not allowing Section 2(b)2(b) to subject A makes sense. If A is subjected to Section 2(b)2(b), A has to bump another employee who has A's former series. The problem with this is that A, who presently does not belong to any series group, bumps an employee, say X, who belongs to a series group. If this happens, some of the engineers in the series group who have higher seniorities than X's seniority lose an employee they can bump when they are subject to layoff. This increases their risk of being laid off and thus violates their right to bump an employee within their series group. The right is clearly given to the employee by Section 2(b)2(a) which says, " . . . , the employee shall have the right. . . ."

The petitioner's current class was Water & Wastewater Systems Maintenance Engineer. Since it is a non-union engineer class on the administrative roster, it does not belong to any series group, that is, it has no hyphenated word at the end of the class title

as shown above. It does not even have a specific engineering discipline such as civil, mechanical, electrical, etc.

Thus, the petitioner's case belongs to Type 4. All non-union engineers are of Type 4 and none of them were demoted or laid off except for the petitioner.

As mentioned in the Appellant Brief (page 24), the respondents did not subject Mr. Parvez Jafri, an acting Head Engineer, to Section 2(a)1. Mr. Jafri would have been demoted back to his permanent, not acting, status class if he had been subjected to Section 2(a)1. However, a unionized engineer in the same situation, Mr. Sushil Batra, was subjected to Section 2(a)1. This and the above indicate that Rule 10 is not applicable to non-union engineers.

Mr. Jarvis says (from the 7th line from the bottom of page 5), "Section 2(b)2(b) is violated when an employee who has previously held permanent status in a different class not in his current series is not allowed to accept a demotion or transfer to that class, provided. . . ."

This is the statement Mr. Jarvis made by adulterating the original Section 2(b)2(b) as mentioned earlier. Mr. Jarvis replaced the word "another" in the original text of Section 2(b)2(b) with his own words "a different" and inserted into "in series" in the original text of Section 2(b)2(b) with his own words "his current."

He alters the meaning of Section 2(b)2(b) even though the original Section 2(b)2(b) makes perfect sense as it is.

Firstly, after Mr. Jarvis adulterated Section 2(b)2(b), he decides for himself that, because the series of the petitioner's formerly-held class is different from the petitioner's current series, the petitioner should be demoted by applying Section 2(b)2(b). The original Section 2(b)2(b), however, says nowhere about the sameness or difference between the current series and the former series. Actually the original Section 2(b)2(b) does not allow the petitioner being subjected to Section 2(b)2(b) as explained earlier.

Secondly, Mr. Jarvis, in the statement he made by adulterating the original Section 2(b)2(b), says, " . . . not in his current series. . . ." This is nonsense because the petitioner has no current series. Mr. Jarvis should tell the court what his current series is if there is one.

Thirdly, Mr. Jarvis says in the statement he made by adulteration that Section 2(b)2(b) is applicable to an employee if the current series and the former series of the employee are different. But this was not done with another employee. The evidence is given in App. 1 of this Reply Brief. It is the Notice of Reduction in Force Rights given to Mr. M. Hasnain. It shows that Mr. Hasnain, Sr. Assoc. Civil Engr.-Design was subjected to "A Demotion or Transfer to the formerly held class of Assoc. Civil Engr.-Design. . . ." In other words, the respondents demoted him by subjecting Mr. M. Hasnain to Section 2(b)2(b) even

though Mr. Hasnain's current series and his former series are the same. This shows that Mr. Jarvis' own altered rule has no credibility.

The respondents made the petitioner bump Mr. M. Hasnain and take his class when they demoted the petitioner. This seems to suggest that the respondents did whatever it took in order to demote the petitioner regardless of Rule 10.

Finally, if Mr. Jarvis' altered rule is followed, the Department will ask some employees in a given series group to be bumped by other employees in the given series group while the Department will ask some other employees in the same given group to be bumped by employees outside of the given series group. This arbitrariness invites abuse by the respondents.

Mr. Jarvis also says (from the 2nd line from the bottom of page 5), "Petitioner accepted demotion to his previously held class, which was Senior Associate Civil Engineer." On April 21, 2006, the respondents gave the petitioner two choices: either demotion to his formerly-held class or layoff (Writ of Certiorari, App. 49 and App. 50).

Knowing nothing about Rule 10 at that time, even though the petitioner was convinced that it was retaliation, he chose the demotion. Section 2(b)2 says, "Such employees shall be laid off subject to the following demotion or transfer rights. . . ." Since Section 2(b)2(b) was not applicable to the petitioner, the two choices should not have been presented to the petitioner in the first place.

Mr. Jarvis finally says (from the 1st line from the top of page 6), "Senior Associate Civil Engineer-Design is a formerly held class not in series." The nonsense or contradiction in this Mr. Jarvis' own statement is so obvious. Senior Associate Civil Engineer-Design, as the hyphenated word "Design" indicates, belongs to the Design series group. How can it be not in series?

The above explanation by the petitioner proved in several ways that what Mr. Jarvis says in his Reason II for denying the petition is senseless and contradicting and has no credibility.

As mentioned earlier in the above, violation of Section 2(b)2(b) is only one of the violations. The respondents violated Section 1(a), Section 2, Section 4(a) and the spirit of Section 9 as well.

REPLY TO THE RESPONDENTS' REASON III FOR DENYING THE PETITION

How can the analysis of incorrect information and the analysis of correct information produce the same result? The pro se submissions were only about violation of Rule 10 by the respondents/defendants and therefore the pro se submissions were mainly related to the retaliation claim. If the District Court had considered the pro se submissions, it would have understood Rule 10 correctly and thus would not have discredited the petitioner/plaintiff so severely.

Also, importantly, when the District Court was doing the analysis, the District Court and the petitioner/plaintiff were not aware that the racial claim contained the misstatement. The misstatement in the racial claim caused the District Court to discredit the petitioner/plaintiff.

If the misstatement in the racial claim and the misunderstanding of Rule 10 are both considered by the District Court this time, it would make a difference.

The petitioner/plaintiff was sending pro se submissions to the District Court because his attorney did not take phone calls, did not return phone messages and did not reply to emails from the petitioner/plaintiff. The petitioner/plaintiff did not tell the District Court about this when he was sending pro se submissions. It was the fault of the petitioner/plaintiff not having told the court why he was sending the pro se submissions. The District Court scolded the petitioner/plaintiff in its Opinion and Order. The petitioner sometimes wonders if the District Court was angry with him when the court was doing the analysis.

REPLY TO THE RESPONDENTS' REASON IV FOR DENYING THE PETITION

The obstructions occurred after the petitioner/plaintiff filed this lawsuit with the District Court and therefore could not be raised in the District Court.

The obstruction by Ms. Kimberly Hall is described in the Appellant Brief (pages 17, 18).

Respectfully submitted,

GANG SONG, Pro Se

App. 1

Notice of Reduction in Force Rights

TO: Mohammed Hasnain, Sr. Assoc. Civil Engr-Design Engineering

FROM: Evella Thomas
DWSD – Human Resources Office

DATE: April 21, 2006

SUBJECT: Notice of Reduction in Force Rights

Your position of **Sr. Assoc. Civil Engr.-Design** has been reached for layoff. In accordance with the attached **Human Resources Rule 10**, you have the following rights within the Detroit Water and Sewerage Department to.

SECTION 1 – (To be completed by HR)

1. **A Demotion in Series to the title of ___ at a salary of $ hr.**

   The status change to your new title will be effective _____.

2. **A Demotion or Transfer to the formerly held class of Assoc. Civil Engr.-Design at a salary of $59,300.**

   The status change to your new title will be effective **May 8, 2006**.

SECTION 2 – (To be completed by Employee)

In accordance with Human Resources Rule 10 and/or the applicable contract provision, I understand that my failure to select one of the above-mentioned options shall result in layoff and may effect my citywide displacement and recall rights. I understand that by waiving my right, I may be deemed inelligible for unemployment benefits by the Michigan Unemployment Insurance Agency.

☒ I select # 2

OR

☐ I select layoff _____

Employee signature Mohammed Hasnain

Date 04/25/06

ATTACHMENT – RULE 10